IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11027 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHWIN @ JASHWANT @ JASHIYO VISHNUBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MR MIG MANSURI for Petitioner

MR UDAI R. BHATT, AGP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/11/2000

ORAL JUDGEMENT

1. The petition has been filed by the petitioner under Article 226 of the Constitution of India challenging his detention order passed against him on 29th January, 2000 under the Gujarat Prevention of Anti

Social Activities Act (PASA for short) by Police Commissioner, Ahmedabad City, in exercise of powers conferred upon him under Sec. 3(1) of the PASA Act. The petitioner came to be detained from 29th January, 2000.

2. Grounds for detention, copy of which is produced on record, indicates that in all 8 offences against the petitioner under Sections 379, 324 and 323 of the IPC were registered from 14th December, 1999 to 13th January, 2000 in Ahmedabad and Gandhinagar Police Stations. The detaining authority took into consideration the investigation in the above said crimes and the statement of witnesses, who have offered their statements on assurance of anonymity against the petitioner and from the above material, the detaining authority reached to the subjective satisfaction that the petitioner was a "dangerous person" within the meaning of Sec. 2(c) of the PASA Act. Detaining authority reached to the conclusion that there was no alternative except to detain the petitioner under the PASA Act.

3. Learned Advocate Mr. MIG Mansuri for the petitioner and learned AGP Mr. Udai Bhatt for the respondents were heard.

4. The detention order came to be challenged on various grounds, but what clearly appears from the grounds of detention is a fact that the detaining authority has failed to apply mind qua facts of the case. It is clearly mentioned in the grounds by the detaining authority that when the detention order came to be passed against the petitioner, the petitioner was in judicial custody. Learned Advocate for the petitioner makes a statement that in all the 8 offences registered against the petitioner, he is in judicial custody till today and he was in judicial custody while the detention order came to be passed. However, the detaining authority has appreciated this aspect with non-application of mind and reached to the conclusion that though the petitioner was in judicial custody, but on preferring the bail application, the petitioner was likely to be released on bail and was also likely to continue his illegal activities in the society. Knowing fully well that the petitioner was in judicial custody, however, the detaining authority has concluded in the grounds of detention that the aspect of cancellation of bail was also taken into consideration but since the procedure was likely to take time, the procedure was not resorted to, but the question of considering the cancellation of bail was not at all required by the concerned authority

because the petitioner was in judicial custody.

5. In view of the above discussion, it is clear that when the petitioner was in judicial custody and was not capable of continuing his illegal activities, the detention order was not at all required. The detaining authority failed to consider this aspect. Moreover, the detaining authority was also took into consideration the cancellation of bail under Section 437(5) of the Cr. P.C. which reveals the total non-application of mind qua facts of the case. As said above, the petitioner was in judicial custody and was not on bail and therefore the proceedings u/s 437 (5) of the Cr.P.C. could not have been resorted to.

6. In this view of the matter, the detention order impugned is vitiated by non-application of mind by the detaining authority and the same is required to be set aside.

7. In the result, this petition is allowed. The detention order passed by the Police Commissioner, Ahmedabad City dated 29.01.2000 is hereby ordered to be quashed and set aside. Petitioner - Ashwin @ Jashwant Jashiyo Vishnubhai Patel is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute.

(J.R. Vora, J.)

p.n.nair